



SPECIAL PROVISIONS FOR CONSTRUCTION WORK FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APR 2009)

Preamble

Work performed under this Subcontract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (ARRA, Recovery Act, or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

The Subcontractor should begin its planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, the Subcontractor should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Subcontractor will be provided these details as they become available. The Subcontractor must comply with all requirements of the Act. If the Subcontractor believes there is any inconsistency between Recovery Act requirements and current Subcontract requirements, the issues will be referred to the University Procurement Representative for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

In complying with Section B, *Segregation and Payment of Costs*, below, the Subcontractor shall invoice ARRA funded work separately from non-ARRA funded work. All invoices must be submitted within 30 days of the subcontract expiration date or by April 30, 2015, whichever is earlier. If this Subcontract exceeds \$25,000, each of the Subcontractor's *Application and Certification for Payment* for ARRA funded work shall be accompanied by a completed *ARRA Invoice Addendum* (the form of which is included as part of the Subcontract) or shall state the information required by the invoice addendum. The addendums or *Applications and Certifications for Payment* must state the total number of hours

being invoiced for work by the Subcontractor and all next lower-tier subcontractors, in addition to any other invoice requirements.

References below to “Contractor” in Section B, except for the third paragraph thereof, and in Section G, shall apply to the Subcontractor. Subcontractor requirements under Section F are described in more detail in the Section entitled “ARRA Reporting Requirements.”

Definitions

For purposes of this clause, “Covered Funds” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for Recovery Act activity in lieu of invoicing.

C. Prohibition on Use of Funds

None of the funds provided under this Subcontract derived from the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm>.

E. Publication

Information about this Subcontract will be published on the Internet and linked to the website www.recovery.gov or www.FederalReporting.gov, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration Requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the 10th day after the end of the calendar quarter in which the Subcontractor received the award.

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

ARRA FLOWDOWN CLAUSES

Access by Comptroller General

DEAR Clause 970.5232-3, *Accounts, Records, and Inspection* (Dec 2007) of the General Provisions of the Subcontract shall apply to all work funded by the Recovery Act, and Paragraph (h)(1) of the clause is hereby replaced with the following:

"(h) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions."

Buy American Act

FAR Clause 52.225-21, *Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act - Construction Materials* (Mar 2009) is added to the *Clauses Incorporated by Reference* clause of the General Provisions of the Subcontract, under the "Applicable to all Subcontracts" section.

The clause shall apply to work funded by the Recovery Act in place of FAR Clause 52.225-9, *Buy American Act – Construction Materials*.

Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010)
(FAR Clause 52.203-15)

- (a) The Subcontractor shall post notice of employees rights and remedies for whistleblower protections provided under Section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).
- (b) The Subcontractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are funded in whole or in part with Recovery Act funds.

ARRA REPORTING REQUIREMENTS

1. Definitions. As used in this provision -

"First-tier subcontract" means a subcontract awarded directly by the University, as a Federal government prime contractor funded by the Recovery Act.

"Jobs created" means an estimate of those new positions created and filled, or previously existing and unfilled positions that are filled, as a result of funding by the Recovery Act. This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, and permanent positions expressed as a "person year," consistent with the Subcontractor's existing personnel procedures.

"Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, and permanent positions expressed as a "person year," consistent with the Subcontractor's existing personnel procedures.

"Total compensation" means the complete pay package of Subcontractor employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CFR 229.402.

- 2. This Subcontract is a first-tier subcontract for products and/or services and is funded under the Recovery Act. Section 1512(c) of the Recovery Act requires each contractor that receives contracts from a Federal agency under the Recovery Act to report on use of funds. The Subcontractor shall assist the University as may be necessary in fulfilling its ARRA reporting requirements.
- 3. If this Subcontract exceeds \$25,000, it is conditioned on the Subcontractor providing the following detailed information, as required by the Recovery Act and related Agency regulations, which can be satisfied by completing the University's *ARRA Representations and Certification Supplement* form:
 - (a) The Subcontractor's unique DUNS Number for the applicable physical location of the Subcontractor's business, and any parent company.
 - (b) The Subcontractor's Central Contractor Registration (CCR) Cage Code number (the CCR is available at: <http://www.ccr.gov/>).

- (c) The applicable North American Industry Classification System code.
- (d) An estimate of the total hours that will be expended by all of the Subcontractor's personnel in performing the Subcontract.
- (e) The Subcontractor's physical address including street address, city, state and nine-digit zip code and congressional district if in the United States.
- (f) The Subcontract primary performance location, including street address, city, state, nine-digit zip code, and congressional district if in the United States.
- (g) The names of the Subcontractor's five most highly compensated officers and the total compensation of each of them for the calendar year in which the Subcontract is awarded, if:
 - (1) In the Subcontractor's preceding fiscal year, the Subcontractor received:
 - 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; or
 - \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986,

(Note: The information required in Paragraphs 3 (a) through (f), above, is not required to be reported if the Subcontractor's gross income did not exceed \$300,000 in the previous tax year.)

- 4. Additional information may be required from time to time to satisfy the University's reporting requirements for ARRA funded work,

End of Special Provisions